

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARTEZ MICHAEL MACKIE,

Defendant-Appellant.

UNPUBLISHED

June 24, 1997

No. 176718

Wayne Circuit Court

LC No. 93-11989

Before: Gage, P.J., and Reilly and Hoekstra, JJ.

MEMORANDUM

Following a bench trial, defendant was convicted of armed robbery, MCL 750.529; MSA 28.797. Thereafter, he was sentenced to two-and-a-half to ten years' imprisonment. He now appeals as of right. We affirm.

First, we hold that issues concerning the legality of defendant's arrest and the validity of a photographic identification proceeding, and the effect of such matters on the victim's in-court identification of defendant as the robber, are not preserved. *People v Childers*, 20 Mich App 639, 645-646; 174 NW2d 565 (1969). However, if, as defendant contends, he was illegally arrested, then a photographic identification proceeding was appropriate since, for that purpose, defendant could not be considered to be legally in custody for purposes of applying the rule of *People v Anderson*, 389 Mich 155; 205 NW2d 461 (1973). In any event, there is no record basis for an assertion that the photographic identification proceedings was so suggestive as to be irreparably conducive to misidentification, and thus the record provides no support for an argument that the victim's in-court identification should be suppressed. *People v Kurylczuk*, 443 Mich 289; 505 NW2d 528 (12993). The illegality of defendant's arrest does not of itself provide a basis for suppressing an in-court identification. *United States v Crews*, 445 US 463; 100 S Ct 1244; 63 L Ed 2d 537 (1980).

The record similarly provides no support for a contention that defendant's trial counsel did not adequately investigate the legality of his arrest and the propriety of the photographic identification proceeding before trial and satisfy herself that a motion to suppress was either not warranted or was tactically inadvisable. In any case, the absence of compelling proof that the victim's identification was

subject to suppression, any derelictions of trial counsel in this regard were not prejudicial, and the claim of ineffective assistance of counsel is therefore without merit. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

Affirmed.

/s/ Hilda R. Gage
/s/ Maureen Pulte Reilly
/s/ Joel P. Hoekstra